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SUBJECT: ICTR PROSECUTOR ADDRESSES COMPLETION STRATEGY AND
OTHER ISSUES IN KIGALI

REF: KIGALI 923

Classified By: Ambassador Michael R. Arietti, reason 1.4 (B/D)

11. (SBU) International Criminal Tribunal for Rwanda (ICTR) Prosecutor Hassan Bubacar Jallow addressed the Kigali diplomatic corps November 9, following a two-day conference organized jointly by the ICTR and the University of Rwanda entitled "Challenging Impunity." Jallow outlined next steps for the ICTR's completion strategy, including genocide case transfers to national jurisdictions, a permanent home for ICTR archives, witness protection, capacity building of Rwanda's judicial system, "legacy" arrangements for uncompleted cases, acquitted defendants, and at-large suspects. He called upon the donor community to answer the GOR's call for assistance with its preparations for receiving cases from the Tribunal. End summary.

12. (SBU) Following a two-day conference on such topics as ICTR-GOR cooperation, strengthening national jurisdictions, and fighting impunity, Prosecutor Jallow addressed the assembled diplomatic corps at the ICTR compound in Kigali. He outlined the ICTR's completion strategy and related issues, first noting that the conference had gone well, and that the ICTR and GOR had put the "Gakwaya incident" behind them (Note: Gakwaya was the ICTR defense counsel accused by Rwanda of genocide offenses who resigned after GOR protests -- see refTel).

13. (C) Jallow said that up to 20 cases would be transferred from the ICTR to the GOR, some involving defendants in custody, and some at-large suspects. If Rwanda moved expeditiously on its legislative initiative to abolish the death penalty, the first moves to transfer cases could begin in the first quarter of 2007. In assessing whether Rwanda could hold fair trials, a principal worry for the ICTR was provision of an adequate defense. While Rwanda has provisions for legal assistance to indigent defendants, these were unfunded and inadequate. Sufficient resources had to be found to provide for a real defense, with proper preparation before trial (ICTR staff suggested separately that appointed defense counsel in Rwanda usually did no more than "pound the table" on the day of trial, with no effort made before the judge called the case). Jallow noted that the ICTR intended to monitor transferred cases, and Rwanda would be required to make a clear commitment to return a case (and its defendant) to Arusha if the ICTR found court proceedings to be deficient.

14. (SBU) Witness protection mechanisms would be required as well, said Jallow, something more than simply protective efforts at the courthouse (a need identified by the GOR as well in its presentations at the conference). While the GOR

also asked for assistance programs for victims, this was beyond the ICTR's mandate. The GOR criticizes us for this regularly, he said, but we do not have resources for victims.

¶5. (SBU) Capacity building for the Rwandan judicial system received concerted attention at the conference, and Jallow echoed this requirement, calling upon donor governments to assist. He noted the GOR's call for a comprehensive "work plan" for enhancing the court system, and he asked donors to give serious thought to this issue. Clearing of case backlogs and training programs for court personnel appeared particularly urgent, he said.

¶6. (SBU) Another issue of concern for both the ICTR and the GOR was disposition of the Tribunal archives, following its projected 2008 completion of trials and 2010 completion of appeals. Some acceptable depository of ICTR records had to be found, either at the UN, or with Rwanda (or some form of joint custody). A parallel "legacy" issue concerned disposition of cases involving those indicted but not yet in custody -- some mechanism had to be found to keep the cases "always open." Said Chief Prosecutor Stephen Rapp after the briefing, "we don't want suspects to run out the clock on the international community." Another problem concerned those already acquitted, or who would one day complete their sentences. While some nation ultimately had to accept them, several acquitted defendants had yet to find any takers, said Rapp.

¶7. (C) Jallow finished by briefly outlining numbers and types of cases either completed or underway. Of thirty-one defendants already tried, he said, 26 had been convicted, and 5 acquitted. Twenty-six other individuals were in custody

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and awaiting trial. A further 18 were on the ICTR's list of at-large suspects, including Felicien Kabuga, recently the subject of extensive discussions with the Kenyan government (said Rapp: "we say he's there, they say he is not. We show photographs of Kabuga in Kenya, they say, well, he's not here now). Jallow asserted that, with 13 military leaders, 16 ministers, several regional governors, and prominent clergymen and media personalities in custody, "We will finish trials by 2008, and we will have judged those who planned and directed the genocide."

¶8. (C) Comment. Jallow's message to the assembled diplomats was clear: the Rwandans (and the ICTR) needs donor support. The GOR asks the Tribunal for programs and assistance beyond its mandate and its resources (a rebuilt judiciary, domestic witness protections programs, pursuit of suspects not sought by the Tribunal, aid for victims of genocide, etc.). The Tribunal does not want these requests to go unanswered, and perhaps affecting its completion strategy, its relations with the GOR, and its legacy as an important international institution. Support for the judicial system (including defense counsel) appears to us to be a potential area of interest for the just-announced MCC Threshold program for Rwanda. End comment.

ARIETTI